MUNICIPAL WASTE MANAGEMENT POWERS IN ONTARIO

A DISCUSSION PAPER

Ministry of Municipal Affairs

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EXECUTIVE SUMMARY

Not long ago, getting rid of garbage by sending it to landfill sites was the sum total of municipal waste management responsibility. Recently, however, the need for improved environmental management and conservation of resources has made solid waste management a key public concern in Ontario. As a result, developing and operating solid waste management services has become one of the most important and complex functions of municipal government in the 90s.

Providing leadership in solid waste management is a high priority for the Provincial Government. In February 1991, Ontario's Minister of the Environment, the Honourable Ruth Grier, unveiled the Ontario Waste Reduction Action Plan. The purpose of the Plan is to divert at least 25 per cent of the Province's municipal solid waste from landfills by 1992 and 50 per cent by the year 2000.

Municipalities are working to meet the challenge. The Association of Municipalities of Ontario has prepared two studies on municipal solid waste management. These studies, entitled *The Municipal Waste Management Planning and Approval Process* and *The Municipal Waste Abatement Strategy*, reviewed the situation from the municipal perspective, made recommendations to the Province on waste management issues and requested additional waste management powers. Many municipalities have also set up programs to divert waste from landfill.

This discussion paper examines what powers municipalities will need if they are to implement waste management strategies that effectively meet current and future challenges. It describes the framework of municipal waste management in Ontario, develops principles for statutory municipal waste management powers and offers proposals for new statutory powers.

The proposals are in the form of potential powers and proposed options and are summarized below. These potential powers and proposed options do not constitute provincial policy. They are being offered to provide a focus for the discussion on municipal waste management powers, not to limit the scope of the discussion. It is hoped that interested parties will bring forward additional ideas and suggestions on municipal waste management powers for consideration of the Government.

For the full text and analysis of the proposals listed below, see the chapter entitled "Proposals for Municipal Waste Management Powers".

Potential Powers

1. Provide municipalities authority to manage all types of waste, to engage in all aspects of waste management: planning, collection, 3Rs programs, and disposal (see page 29).
2. Increase penalties for breaching municipal waste management by-laws (see page 29).
3. Give municipalities authority to enter property for waste management planning purposes, subject to safeguards (see page 30).

Proposed Options

1. Three options are proposed for permitting municipalities to regulate the flow of waste generated within their boundaries (see pages 30 to 33):

   Option A: Authorize municipalities:
   - to direct residential waste to designated facilities and to require that residential waste be separated at source.

   Option B: Authorize municipalities:
   - to direct residential waste to designated facilities and to require that such waste be source separated; and
   - to direct IC&I waste for which municipalities have diversion facilities to designated facilities and to require that such waste be source separated.

   Option C: Authorize municipalities:
   - to direct residential waste to designated facilities and require that such waste be source separated; and
   - to direct IC&I waste for which municipalities have a waste diversion plan accepted by the Ministry of the Environment to designated facilities and to require that such waste be source separated.

2. Three options are proposed for dealing with the issue of municipal authority to require compensation from operators of landfill facilities (see pages 33 and 35):

   Option A: Do not give municipalities the power to require compensation from waste disposal operators and rescind the power currently found in legislation affecting counties and certain regional municipalities.
   Option B: Extend the municipal power to require compensation from waste disposal operators to all municipalities with waste disposal powers but restrict the compensation levels to waste management related costs (subject to an appeal to the OMB).
   Option C: Extend the power to require compensation from waste disposal operators to all municipalities with waste disposal powers without restrictions as to use of funds (subject to an appeal to the OMB).

3. Two options are proposed for dealing with the issue of municipal power to regulate tipping fees for all waste management facilities that receive a municipality's waste (see pages 35 and 36):

   Option A: Do not give municipalities the power to regulate tipping fees of waste management facilities (status quo).
   Option B: Provide municipalities authority to regulate tipping fees for all facilities (private or municipal) that are part of their waste management system in accordance with a waste diversion strategy accepted by the Ministry of the Environment.

4. Two options are proposed for municipal authority to charge users of municipal waste management services (see page 36):

   Option A: Municipalities be granted authority to charge for waste disposal by class, volume, weight or any criteria they choose.
   Option B: Municipalities be granted authority to charge for collecting and disposing of waste by class, volume, weight or any criteria they choose.

5. Three options are proposed for distributing waste management powers between the upper and lower tiers in the county and regional municipal systems (see pages 36 to 39):

   Option A: All waste management powers of local municipalities be transferred to the upper tiers and the upper tiers be granted 3Rs powers; upper tiers be permitted to delegate the transferred powers and 3Rs powers to local municipalities; upper tiers also be permitted to set terms and conditions of delegation.
   Option B: Upper tiers be granted authority over waste disposal and 3Rs programs; lower tiers retain authority over collection subject to upper tier terms and conditions; upper tiers be authorised to assume collection services from lower tiers subject to an agreement.
   Option C: In regional municipalities upper tiers be granted authority over solid waste disposal and lower tiers be granted authority over 3Rs and collection; upper tiers be allowed to assume collection and 3Rs powers from the lower tiers, subject to an agreement. In counties, lower tiers retain all waste management powers, but the upper tiers be permitted to assume any or all powers from the lower (tiers as provided for in Bill 201, 1989).

As mentioned earlier, these potential powers and proposed options do not represent government policy and are not meant to be all inclusive. Rather, they are intended to stimulate informed discussion among interested parties and encourage them to bring their views and concerns to the Government. In doing so, they will greatly assist the Province in developing legislation that takes into account the interests of all those affected.

INTRODUCTION

Purpose of The Paper

This paper reviews the municipal waste management situation in Ontario and suggests what statutory powers municipalities will need if they are to implement waste management strategies that effectively meet current and future challenges. Specifically, the paper:

- defines the context of municipal waste management;
- describes the characteristics of comprehensive and effective waste management systems;
- outlines the current municipal authority for solid waste management;
- surveys the organizational practices municipalities use to deliver waste management services;
- analyzes the inadequacies and problems of current municipal waste management powers;
- lists some principles on which municipal solid waste management powers should be based; and
- makes proposals for new solid waste management powers at the municipal level.

The proposals are not government policy, and they are not meant to be all inclusive. Rather, these suggestions for municipal waste management powers are presented to elicit comments, views, and ideas from municipalities, waste management organizations, the waste management industry, environmental groups, labour organizations, business associations, and the general public. This consultation process will allow the Province to consider the concerns of all the stakeholders when it prepares new legislation on municipal waste management powers.

The Challenge Ahead

Until recently, solid waste management was considered one of the less complicated services that Ontario municipalities provided to their residents. Municipalities collected curbside refuse and deposited it in landfill facilities. The old adage, "out of sight, out of mind", is an apt description of this approach to waste management.

Those days are rapidly coming to an end. Issues involving waste management are at the forefront of public concern, not only because people are demanding that the environment be protected, but because natural resources must be conserved. New techniques and methods for dealing with waste are only one aspect of a much larger picture. Changes will be needed in industrial production processes, packaging practices, consumption patterns, and in the definition of waste itself. Meeting these challenges effectively will require leadership from all levels of government in the years ahead.

On 21 February 1991, Ontario's Minister of the Environment, the Honourable Ruth Grier, announced creation of the Ontario Waste Reduction Action Plan (WRAP), a policy for redirecting waste management efforts into diverting waste rather than — as in the past — burying it in landfill sites. By establishing definite objectives and policies for waste diversion, the Plan breaks new ground. The purpose of the Plan is to divert at least 25 per cent of the Province's municipal waste from landfills by 1992 and 50 per cent by the year 2000.

Municipalities have been taking steps to meet the emerging challenges. In 1989, the Association of Municipalities of Ontario prepared two papers on solid waste management. These papers were entitled *The Municipal Waste Management Planning and Approval Process* and *The Municipal Waste Abatement Strategy*. They analyzed the solid waste management situation from the municipal perspective and made recommendations to the Province on approaches for dealing with waste management issues, particularly those relating to diversion programs. In recent years, many municipalities have introduced programs to divert waste from landfill.

Clearly, Ontario's new waste management priorities — reducing the amount of waste we produce rather than burying it discreetly — will have a major impact on all Ontario citizens. Reducing the amount of waste transported to landfill sites will require the active participation of every individual citizen, as well as all levels of government.

Although the Waste Reduction Action Plan is a provincial initiative, municipalities, in conjunction with the private sector, will provide most of the necessary facilities, services, and programs. Municipalities and the Province will need to work together as partners to develop innovative approaches to solid waste management.

The Province wants to encourage municipalities, the private sector, labour and other interested parties to cooperate in developing waste management technology and infrastructure. These arrangements will be geared to the Province's commitment to give priority to "Green Industries" — those that pioneer in developing and using technologies and systems that both reduce waste and respect the integrity of the environment.

Achievement of these objectives will demand a more comprehensive and co-ordinated system of waste management than existed in the past. The benefits of effective solid waste management are obvious. It will contribute to a more environmentally sustainable way of living and will help make Ontario a cleaner, healthier place for future generations.

THE CONTEXT OF MUNICIPAL WASTE MANAGEMENT

This section explains which groups and organizations ("stakeholders") have a role in municipal waste management and briefly describes provincial initiatives related to municipal waste management.

Municipal Waste Management Stakeholders

Municipal waste management stakeholders include:

- the Province;
- municipalities;
- residential waste generators;
- private sector waste generators;
- organized labour;
- the private waste management and recycling industry;
- charitable organizations and interest groups.

The Province

The most important components of the Province's role as a major stakeholder in municipal waste management are in:

- setting and enforcing standards, and in developing guidelines and policies on all aspects of waste management, including planning 3Rs programs, treatment, and disposal;
- ensuring that municipalities have the legal authority they need to develop and operate modern waste management systems geared to waste reduction;
- providing financial and technical assistance to municipalities for improved waste management planning, facility development and 3Rs programs;
- reviewing and approving applications for waste management facilities;
- promoting research and development of all aspects of waste management, particularly the 3Rs programs;
- promoting awareness of resource conservation and responsible waste management through public information and education programs;
- setting an example through its own waste reduction, reuse, and recycling practices, and through its own procurement policies; and
- continuing to actively participate with the federal government and with other provinces in developing national policies and packaging regulations.

Municipalities
Municipalities are key stakeholders in solid waste management because of their role in:

- planning waste management systems, providing various waste management services such as collection, 3Rs programs, processing, and disposal in compliance with provincial policies and regulations; and
- developing and operating environmentally secure waste management facilities that keep pace with residential, industrial, commercial, and institutional expansion.

Residential Waste Generators
Householders have a stake in waste management because:

- they generate 40 per cent of Ontario's solid waste, some of which is hazardous waste;
- they bear the cost of maintaining and operating municipal waste management services;
- their participation in recycling and re-use programs ("Blue Box" and municipal composting) diverts waste from landfill; and
- their purchasing choices can reduce the quantity of waste which enters the waste stream.

Private Sector Waste Generators
The private waste sector waste generators (referred to throughout this report as the industrial/ commercial/ institutional sector or the IC&I sector) have a role to play in solid waste management because:

- they generate 60 per cent of Ontario's municipal solid waste;
- many IC&I organizations have developed and are implementing waste diversion plans;
- the purchasing choices, and the production and operating processes used by many businesses can reduce waste and have an impact on waste diversion programs; and
- IC&I enterprises bear the cost of waste management services provided to them.

The private sector has expressed strong support for the development of waste management systems which are geared to waste diversion.

Organized Labour
Organized labour is an important stakeholder in solid waste management since:

- unions, such as the Canadian Union of Public Employees (CUPE), represent approximately 2,500 municipal waste management workers in Ontario;
- union members, employed by private and public sectors, operate waste management services for residential users and for thousands of businesses and public enterprises;
- CUPE and other organized labour bodies have contributed to policy debates on solid waste management and 3Rs activities in Ontario; and

- changes to the municipal waste management system will have to take into account the impact on labour.

The Private Waste Management and Recycling Industry
Private sector enterprises are involved in collecting, processing, and composting waste and recycling materials, and operating waste disposal sites. The private waste management industry is playing an important role in developing and implementing waste management systems in the Province as indicated by the following:

- it has been estimated, that private haulers collected more than 1.4 million tonnes of waste in Metro Toronto from the commercial and industrial sectors in 1990;
- the private waste management industry provides services to the IC&I sector and also to a significant number of municipalities; and
- private companies participate in a diverse range of 3Rs activities, including traditional recycling of metals and fibres as well as in the operation of materials recovery facilities (MRFs), composting facilities, and other processing plants.

The Canadian Association of Recycling Industries and the Ontario Waste Management Association (OWMA), are just two of several associations whose member companies provide waste management and recycling services. These associations support increased diversion from disposal facilities.

Charitable Organizations and Interest Groups
Charitable organizations and interest groups make an important contribution to waste management as follows:

- some public service groups, such as Goodwill Industries, provide for the re-use of thousands of tonnes of clothing and goods that would otherwise go to Ontario landfill sites; and
- others, such as environmental groups, play an important role in policy debates, raising public awareness of environmental issues and educating people on possible courses of action to take in dealing with those issues.

The Provincial Policy Framework

The proposals and options discussed in this paper are intended to enable municipalities to develop and operate modern waste management systems geared to waste reduction. The following are the relevant provincial policy initiatives.

The Waste Reduction Action Plan

The Waste Reduction Action Plan announced by the Minister of the Environment gives impetus to many of the proposals and options discussed here. As mentioned earlier, the goal of this Provincial initiative is to divert at least 25 per cent of the Province's municipal waste from landfills by 1992 and 50 per cent by the year 2000. It is based on four elements: enacting strong regulatory measures; developing financial and technical systems; mounting outreach/education activities; and encouraging market development. These are set out in two existing Initiatives Papers, and several others now being developed.

Initiatives Paper No. 1: Regulatory Measures to Achieve Ontario's Waste Reduction Targets

This paper identifies the Province's first steps toward a regulatory framework related to the Waste Reduction Action Plan. The key components are:

- mandatory blue box recycling programs for all but the smallest municipalities. At present, small municipalities are defined as those with populations of fewer than 5,000 people;
- waste audit requirements (studies dealing with the generation and management of waste) for major users of packaging and for other major IC&I sector waste generators by 1992;
- programs for separating and composting leaves and yard waste;
- mandatory separation of waste materials, depending on type, at retail malls, office complexes, schools, hospitals, hotels, larger restaurants, larger manufacturing facilities, and other IC&I facilities; and
- streamlined approvals for new recycling facilities that meet provincial standards.

In October 1991, after this Initiatives Paper was released, the Ministry of the Environment's Waste Reduction Office (WRO) began extensive public consultation on implementing many of these regulatory reforms.

Initiatives Paper No. 2: Waste Management Systems Planning in Ontario

This paper, which deals with reforming the way Ontario municipalities plan waste management systems, proposes a new Waste Management Systems Plan (WMSP) program with the following features:

- municipalities and interested members of the public will be provided with guides that set out the waste management planning process and explain related provincial statutes, regulations, and guidelines.
- added certainty will be provided through timely Ministry of the Environment guidance/direction; and
- the Ministry of the Environment programs will be delivered through its regional offices, providing a "one window/one voice" service.

These proposed features are intended to address problems that municipalities encounter under the current Waste Management Master Plan (WMMP) program.

Future Initiatives Papers

The Ministry of the Environment is currently developing other initiatives papers which will be offered for public consultation in the near future. Initiatives papers on several subjects are being considered, including the following:

- a long-term approach to financing reduction, reuse, and recycling activities in Ontario;
- a marketing strategy to stimulate increased demand for recyclable materials; and
- a comprehensive public education program to provide information, training, and technical assistance on waste reduction.

MUNICIPAL WASTE MANAGEMENT

Ontario is entering a new era in waste management, one whose main emphasis is waste reduction. This new direction will require major changes in how waste is managed. Historically, almost all waste has been directed to landfill sites, and waste management activities have tended to take place in an *ad hoc* fashion.

In order to effectively reduce the amount of waste produced and increase the quantity of waste diverted, municipalities need to consider the requirements of:

- a comprehensive waste management system; and
- an effective waste management system.

A Comprehensive Waste Management System

A comprehensive waste management system consists of the following activities:

- planning;
- waste collection;
- waste diversion; and
- waste disposal.

Planning

Waste management plans are comprehensive, long-term strategies adopted by municipalities, for directing their waste management activities. The purpose of Initiatives Paper No. 2, on the Waste Management Systems Plan program, is to seek input on restructuring the Ministry of the Environment's current Waste Management Plan Program. Under it, the Ministry provides funding to regional municipalities, counties, and groups of municipalities, to develop long-term waste management plans.

This Initiatives Paper proposes that waste management plans:

- include strategies for dealing with all the institutional, commercial, and industrial waste —not just the household waste — generated in municipalities;
- contain waste diversion targets and waste diversion strategies to meet these targets;

- provide methods for selecting the facilities, and sites required to implement such strategies;
- establish the need for waste disposal facilities; and
- identify the preferred sites for facilities.

Collection
Collection includes the removal of garbage and source separated materials from the curbside or the premises of municipal taxpayers. The transportation of that waste to diversion or disposal facilities is part of the collection process.

By requiring that all but the smallest municipalities provide facilities for collecting source separated materials, the Waste Reduction Action Plan will have a significant impact on the collection system. For example, a municipality that has more than 5,000 people and which collects garbage but has no Blue Box or equivalent program, will be obliged to create one in the future. (Draft regulations for source separation are the subject of Initiatives Paper No. 1.)

Once separating waste at source for pick-up is no longer voluntary, municipalities will need legislative tools to enforce it.

Waste Diversion: The 3Rs:
Reducing waste as well as re-using, and recycling discarded materials minimizes the quantity of waste directed to landfill sites. In Ontario, priority is given to waste reduction, followed by reuse, and then to recycling.

Waste reduction is any action that prevents the creation of waste or reduces the amount of waste created. It may involve the consumer: for example, the person who decides to purchase goods with little packaging, or it may involve manufacturers who change their packaging, processing, and designs to minimize or eliminate waste.

The federal and provincial governments have jurisdiction over such sectors as manufacturing and packaging. Nationally, the Canadian Council of Ministers of the Environment (CCME) has set a goal of reducing packaging waste being sent to landfills by 50 per cent by the year 2000. To co-ordinate action in meeting this goal, the CCME set up the National Task Force on Packaging; which has developed the National Packaging Protocol (NAPP). In implementing the protocol provincially, WRAP requires major packaging users to prepare packaging audits and reduction plans to indicate how they will meet NAPP targets.

Municipalities have a role in developing programs designed to encourage waste reduction in individual households, as well as in local commercial, industrial, and institutional establishments. Strategies for municipal waste reduction can include:

- providing information and technical advice on waste reduction opportunities and methods to local waste generators;
- developing educational programs that are readily available to members of the public;
- providing incentives to households to reduce waste.

Reuse refers to practices or systems that allow repeated use of a product in its original form, as opposed to products designed for single use. The best known examples in Ontario are the returnable bottle schemes organized by Brewers' Retail and the soft drink industry.

Recycling initiatives divert discarded materials from landfill to reprocessing plants, and then back into the economic stream. Curbside Blue Box programs operated by municipalities are the best example of this strategy.

Recycling programs are funded in part through the Municipal Recycling Support Program (MRSP). More than 400 Ontario municipalities provided recycling programs in 1991, giving nearly 2.7 million households access to recycling services. Participation rates have ranged between 85 and 90 percent, indicating that there is widespread public support for Blue Box programs; residents in municipalities without such services often express a strong desire to have them. Municipal composting programs, such as curbside pick-up of leaf and yard waste and distribution of subsidized composters, are also popular.

Since the market for recyclables is still in its infancy in Ontario (and, indeed, in much of the western world), most municipal Blue Box programs currently recycle a limited number of products, such as glass bottles, plastic containers, corrugated cardboard, and newspapers. Moreover, there is often a mismatch between supply and demand, with supply exceeding demand in some cases. However, the situation will change in the near future as the demand for recycled products grows.

The number of products that can be recycled is also expected to increase as the recycling industry's technical capabilities increase and the economics of recycling improve. Therefore, a municipality's recycling infrastructure should be flexible enough to allow it to keep adding to the list of materials it recycles. Also, waste management powers should be sufficiently broad to permit municipalities to expand their recycling activities as their capability to do so increases.

The Ministry of the Environment's Waste Reduction Action Plan will require that, at a minimum, all but the smallest municipalities recycle certain materials to be listed in forthcoming regulations. Among the material being considered are corrugated cardboard, newspapers, aluminum, steel, glass, and polyethylene terephthalate (PET) plastic.

Disposal

The landfill component of a municipal waste management system is used to dispose of waste that is not reduced, reused or recycled by diversion programs. While most of Ontario's municipal waste is currently being buried in landfill sites, the new priorities will make disposal a dwindling part of the municipal waste management system.

All new disposal facilities must be developed on the basis of a waste management plan. According to the Ministry of the Environment's proposals, the need for a landfill site — as well as its capacity — should be set out in a municipal waste management plan, capacity being based on the estimated quantity of waste not diverted by 3Rs programs. This underlines the need for landfill design and development to be thoroughly integrated into the system as a whole.

Under the Environmental Assessment Act and the Environmental Protection Act, development and operation of a landfill facility is subject to a rigorous approval process. In addition, under existing environmental legislation, facilities that have reached capacity must be capped and then monitored in perpetuity to ensure they do not contaminate the environment or pose a threat to public health or safety. It should be noted, however, that the municipal power to do this is not clearly spelled out in existing legislation.

An Effective Waste Management System

To develop an effective waste management system geared to waste reduction, the following issues should be considered:

- the need for system integration;
- scale of waste management systems; and
- financial issues.

Need for System Integration

If a municipality is to develop and operate effective waste recycling facilities, it must have an assured supply of appropriate recyclables in a state suitable for processing. Therefore, if a municipality intends to operate a recycling facility, it should have control over collecting and transporting waste. In the same way, if a municipality is to develop adequate landfill facilities, it must have the power to control the amount of waste diverted from disposal.

The implication is not only that all components of a waste management system should work together as a fully integrated system, they should be planned as one.

Scale of Waste Management Systems

A high level of technical and administrative expertise is needed to run effective, modern waste management services, which may be beyond the resources of small municipalities. Furthermore, high environmental standards and stringent environmental approval processes make development of waste disposal sites a very expensive undertaking.

Since, in many cases, development and capital costs do not increase proportionally with size, a large-scale waste disposal facility often makes more financial sense than small-scale systems. Marketing and processing facilities for recyclables, as well as the ability to conduct research studies related to developing 3Rs programs, also benefit from economies of scale. Therefore, while many individual waste management activities can be conducted efficiently on a small scale, comprehensive waste management systems serving substantial populations are often more cost efficient and effective than those serving sparsely populated communities.

Financial Issues

Municipal waste management systems need to be financially sustainable. The Province has developed principles for encouraging and assisting municipalities to develop financially viable systems. Among these guiding principles are: providing for full cost accounting; product stewardship (ensuring that producers of goods pay their share of waste management costs); and keeping taxpayers informed about the full cost of waste disposal. The Ministry of the Environment intends to release an initiatives paper on financing municipal waste management systems in 1992.

The Ministry of the Environment has several funding programs to assist municipalities in carrying out waste management activities, among them: the Municipal Recycling Support Program (MRSP); the Financial Assistance Program (FAP); and the Waste Management Master Plan (WMMP) program. These programs provide funding for developing and implementing new facilities and for waste management planning studies.

MUNICIPAL WASTE MANAGEMENT POWERS

Given the new emphasis on diversion, it is important to look at the characteristics of municipalities that may affect their ability to implement effective waste management systems in the years to come. Their potential to provide comprehensive, coordinated, economically scaled waste management systems is greatly influenced by existing municipal structure and powers.

Types of Municipal Government Systems

Ontario has 832 municipalities, which vary significantly in population, responsibilities, administrative capability, and financial resources. Their authority to provide waste management services and their ability to develop and operate modern systems is equally diverse. Ontario has three types of municipal government systems:

- single-tier municipal system;
- county system; and
- regional municipal system.

In addition, there are large parts of northern Ontario that are not covered by any form of municipal government.

Single-Tier Municipal System

Single-tier municipalities are those local government entities that do not form part of two-tier municipal structures. In **southern Ontario**, they are known as separated towns and cities. (There is also one separated township - Pelee Island). Although located within the geographical boundaries of counties, separated towns and cities are not part of the county governments surrounding them. (The sole exception is the City of Sarnia which, in 1991, became part of the County of Lambton). These municipalities are often the largest generators of waste but have the smallest land area in which to dispose of it. Separated towns and cities are generally of moderate size: about three quarters of them have a population of 60,000 or less.

All municipalities in **northern Ontario** are single-tier except for the Regional Municipality of Sudbury. Northern single-tier municipalities are much smaller than those in southern Ontario. The majority of them have fewer than 2,000 people.

In the single-tier municipal system, the authority to provide municipal services obviously rests solely with the one level of municipal government. Although they are authorized to provide waste collection and disposal services, these municipalities do not have explicit authority to establish diversion programs.

County System

Counties are a two-tier form of municipal government. All 26 are located in the southern part of the Province. They encompass 498 constituent local municipalities, the majority of which have fewer than 5,000 people. The largest county government, Simcoe, serves a population of little over 177,500 (excluding the cities of Orillia and Barrie), while the smallest, Haliburton, has a population of slightly less than 12,000 people.

Counties cover large geographic areas and most are rural in character. Local municipalities in the county system provide the bulk of municipal services. Although they are empowered to provide several types of services, most upper tier municipalities in the county system offer only a few services such as homes for the aged, road systems, and welfare administration.

Until recently, waste management services were provided exclusively by the lower-tier municipality. After Bill 201 was passed in July 1989, it became possible for counties to assume waste collection and waste disposal powers from local municipalities.

Lanark County's waste management powers are different from those provided for in Bill 201. Private legislation governing the waste management powers of Lanark County, enacted in 1989, permits it to establish new waste disposal sites for residents in 14 of its 16 member municipalities, as well as for two municipalities outside the County. This special legislation also permits Lanark County to establish 3Rs programs and provide waste collection services, with the agreement of the participating municipalities.

Since Bill 201 was enacted, Simcoe and Northumberland Counties have passed by-laws assuming all waste management powers from their local municipalities; several other counties have also assumed some powers, such as waste disposal. Under another statute, Bill 35 (1989), Lambton County has taken over responsibility for waste disposal from its local municipalities.

Regional Municipal System

There are 13 regional municipalities in Ontario (including Metropolitan Toronto, the District Municipality of Muskoka, and the Restructured County of Oxford) encompassing 93 local municipalities. Generally, their population is predominantly urban, although many have large rural areas within their boundaries.

Local municipalities in regional municipalities are more populous than those in counties. While about 60 per cent of them have populations between 10,000 and 60,000, over 15 per cent boast more than 100,000 people. Regional municipalities are also much larger than counties, most have populations of more than 300,000. All cities and towns within the geographical territory of regional municipalities are part of the regional federation.

In contrast to counties, regional municipalities have responsibility for numerous functions, including water supply, sewage collection and treatment, social services, land use planning, and regional roads.

Waste collection in the regional municipal system is a local municipal function, while waste disposal is usually a mandatory responsibility of the upper tier. However, in the Regional Municipality of Niagara and the District Municipality of Muskoka, the upper tier can engage in waste disposal activities only with agreement of the lower tier municipalities.

Unincorporated Areas in the North

Apart from the Regional Municipality of Sudbury, Northern Ontario comprises single-tier municipalities or unincorporated areas (i.e., those without a municipal structure). As noted previously, single tiers may collect and dispose of waste but they do not have explicit authority to establish diversion programs. While the proposals and options contained in this paper do not apply to the unincorporated areas in the Northern Ontario, it is helpful to understand how waste management operates in that area.

In areas that have no municipal structure, provincial ministries or local services boards provide a limited number of services. The boards have authority to collect waste but do not have the power to provide waste disposal facilities. They can, however, enter into contracts with waste disposal operators who can provide such services.

The Ministry of Natural Resources operates many waste disposal sites in unincorporated areas to which residents of these areas can bring their waste.

Municipal Structure and Waste Management

The fact is that the expense and expertise involved in developing and operating a full-fledged modern waste management system could exceed the resources of most local and single-tier municipalities — and even some counties — in Ontario. On the other hand, most regional municipalities have sufficient population to develop the range of facilities required for modern waste management.

The current legislation recognizes that regional municipalities have an important role to play in waste management by requiring most of them to provide solid waste disposal services to their local municipalities. But they do not control waste collection. While upper tiers in counties can engage in all waste management activities, only two have chosen to do so. As a result, in the majority of municipalities, provision of waste management services is divided between two levels of government or provided by local municipalities. Both these approaches to solid waste management could discourage the development of comprehensive, large scale waste management systems.

THE ORGANIZATION OF MUNICIPAL WASTE MANAGEMENT

Solid waste generated in municipalities is divided into two streams: that produced by homes, called residential waste, and that from the institutional, commercial and industrial sector, known as IC&I waste. Most of the residential waste stream is currently managed by municipalities and the IC&I stream by private firms.

The Residential Waste Stream

Given the varying powers that municipalities have, residential waste is managed under different arrangements across the Province. Basically, municipalities use the following methods or a combination of these methods to provide services to the residential sector:

- municipally owned and operated services;
- inter-municipal agreements;
- municipal contracts with the private sector.

Municipally Owned and Operated Services
Some single-tier municipalities own and operate all facilities and services involving waste management. In many regional municipalities, local municipalities own and operate collection systems, while the upper tier runs the waste disposal systems.

Inter-municipal Agreements
Many local municipalities have found that they do not have the means to develop a waste management system that meets current needs. To overcome this problem, they have entered into agreements with other municipalities in the same situation, to provide waste management facilities and services. Some collaborate on disposal only, while others work together to collect, treat, and sell recyclables. Several municipalities co-operate on all collection services. In addition, combinations of all these approaches can be found across Ontario.

There is some concern about the long-term durability of co-operative efforts. Collaboration on waste disposal allows municipalities to expand their search for environmentally suitable sites and to benefit from economies of scale. However, these agreements can be difficult to administer when controversial decisions are involved, such as choosing the location of a landfill site. In some instances, municipalities designated as potential locations have threatened to withdraw from group waste management arrangements.

Contracting to the Private Sector

Many municipalities have chosen to contract residential waste management services to private operators, which may be local, national, or international firms. In some localities, household garbage and recyclables are collected by private companies, which may operate material recovery and composting facilities, and which market recyclables after processing them.

In some situations private waste management firms provide services to a large number of municipalities and IC&I sector clients. These firms therefore benefit from significant economies of scale. In other cases, small companies provide services that are specifically adapted to the needs of local communities.

A Diverse System

In Ontario municipalities, there is clearly a wide variety of arrangements for dealing with residential waste. In fact, several different arrangements may be in operation in a municipality, making integration difficult. For instance, one municipality may have an agreement with one or several others to provide waste disposal services; at the same time, it may have a system for collecting, processing, and selling recyclables, in tandem with yet other municipalities.

These arrangements have worked well in many cases: often waste diversion arrangements represent a high level of community involvement and initiative. As a result, they are well adapted to the particular circumstances of the municipality or municipalities in question.

In other cases, however, such arrangements are the result of piecemeal initiatives designed to deal with immediate problems. As solid waste management becomes more complex, such arrangements are likely to come under increasing strain.

The IC&I Waste Stream

Factories, hotels, restaurants, shopping malls, private offices, and institutions account for about 60 per cent of all municipal solid waste in Ontario. Although it is generally collected and disposed of by private firms, in some areas of the Province 3Rs programs run by municipalities collect and process recyclables from the IC&I sector.

Some of the waste collected from IC&I clients by private firms is disposed of in their own landfill sites; in other cases, they dispose of it in municipally owned and operated sites. In fact, this is becoming the norm in some parts of the Province, as there is a shortage of private waste disposal facilities. (In recent years, very few new private waste disposal sites have been approved in Ontario.)

The Ministry of the Environment's Initiatives Paper No. 1 includes wide-ranging regulatory provisions that will affect the IC&I sector. For example, certain large IC&I establishments — major commercial malls, construction and demolition sites, office complexes, hospitality services, schools and colleges — would be required to separate and recycle designated materials. They would also be required to conduct waste audits and prepare waste reduction plans. This presents a challenge to the IC&I sector and to the private waste management industry.

Given the shortage of landfill sites and the inadequacy of waste diversion facilities in many areas, municipalities recognize they may be called on to play a greater role in servicing the IC&I sector. For instance, municipalities anticipate that they may have to provide facilities such as landfill sites for businesses. They are also concerned that the private sector will concentrate on providing profitable services or on serving only those parts of the Province in which high returns can be achieved.

Residential-IC&I Waste Management Co-ordination

The proposed waste management planning process requires municipalities to plan for all waste generated within their boundaries — not just that from households. Effectively implementing these strategies will require comprehensive and co-ordinated planning that involves all waste generators and other stakeholders.

IMPETUS FOR REVIEWING MUNICIPAL WASTE MANAGEMENT POWERS

Municipalities lack sufficient power and authority to meet demands increasingly being placed on them. The impetus for change comes from various sources. Several municipalities, as well as the Association of Municipalities of Ontario, have requested additional municipal waste management authority. Also, it is felt that the inadequacy, inconsistency and fragmentation of municipal powers impedes municipal efforts to provide modern waste management services geared to waste diversion.

Municipal Requests

In 1989, the Association of Municipalities of Ontario (AMO) issued two reports on municipal solid waste management: *The Waste Management Planning and Approval Process*, (March 1989) and *The Municipal Waste Abatement Strategy* (November 1989). Both deal with a wide range of issues related to waste management and both recommend legislative amendments to give municipalities sufficient authority to develop modern and comprehensive waste management systems. The changes they recommend to municipal powers include:

- providing municipalities with explicit power to establish waste diversion programs and enter into diversion agreements with other municipalities;
- providing municipalities with authority to acquire land for waste management through inter-municipal agreements;
- providing municipalities with authority to enter private property to carry out investigations related to waste management planning; and
- rescinding the power of local municipalities to object to acquisitions of land for waste disposal purposes.

In addition to AMO's request for additional municipal solid waste management powers, several municipalities have petitioned the Province for increased authority in this field. In 1990, two committees were established to consider the recommendations contained in the AMO reports. Staff of the Ministries of the Environment and Municipal Affairs, as well as AMO representatives, sat on these committees and, in May 1991, presented their recommendations to their respective senior managements. One of these recommendations stated that the Ministry of Municipal Affairs release a discussion paper on the issue before preparing municipal waste management legislation.

Inadequate Powers: Waste Diversion

Waste diversion powers are not specifically included in the Municipal Act or in most regional municipal legislation. These statutes grant municipalities the power to collect and dispose of waste. Under the existing legislation, municipalities have established special collection systems for picking up source-separated materials, and have relied on members of the public to voluntarily separate recyclables. However, the Government's announced intention of making residential source separation mandatory means that voluntary efforts are no longer considered adequate. If municipalities are to meet the new provincial requirements, they will need explicit statutory authority to require source separation.

Many municipalities have interpreted their authority over disposal to include the right to develop facilities for processing source separated materials. Others have been more cautious and have postponed development of these facilities pending legislation that explicitly grants them diversion powers.

As described earlier, municipal waste diversion comprises several activities, including:

- promotion of diversion programs;
- source separation of materials;
- processing of those materials;
- conducting research related to developing waste management programs; and
- marketing recycled materials to end-users.

While most municipalities do not have explicit power to engage in many of these activities, there are four regional municipalities and one county that do have some ability to do so. The Municipality of Metropolitan Toronto and the Regional Municipalities of Halton and Durham have waste diversion powers but the legislative provisions are vague and emphasize recovery rather than 3Rs programs. However, legislation governing waste diversion powers of the Regional Municipality of Waterloo and the County of Lanark expressly include authority to establish 3Rs programs.

Inadequate Powers: Hazardous Waste

Many consumer products can pose serious hazards to both public health and the natural environment if they are disposed of improperly.

Consumer products include, among other things, household cleaners, paints and varnishes, batteries, used motor oil and other automobile-related products, pesticides and herbicides. Collectively, the residues from these products are usually referred to as household hazardous waste (HHW).

In order to reduce the threat of these hazards, several municipalities operate programs to improve the safety of HHW disposal. For example, many operate "Toxic Taxis", which pick up HHW from householders. Others also run depots for municipal hazardous waste from households and small businesses.

If municipalities were able to eliminate HHW from landfill disposal, completely or substantially, they could alleviate the threat these materials pose to ground water, and reduce leachate problems of landfills.

However, municipalities lack explicit legislative authority for managing household hazardous waste.

Inconsistency of Powers

Waste management powers vary widely among municipalities. For instance, some upper tier municipalities can charge their local municipalities for waste disposal by weight, volume or class of waste, while other municipalities do not have this power. The Regional Municipality of Waterloo has 3Rs powers, whereas other regional municipalities do not have this authority. Also, counties which have waste disposal powers and the Regional Municipality of Waterloo can direct residential waste to designated waste disposal facilities; other regional municipalities do not have this authority.

Many of these inconsistencies result from attempts to tailor the powers of municipalities to their unique circumstances in response to problems identified at the time the legislation governing them was enacted. Given the environmental and financial challenges presented by municipal waste management, there is a need to ensure that all municipalities have the control they need to manage their waste efficiently and in an environmentally sound manner.

Duplication and Overlap of Powers

In several fields, municipal powers to regulate and control the development and operation of waste management facilities overlap with those of provincial agencies. For example, current legislation permits local municipalities and several regional municipalities to regulate the operation of waste disposal sites and allows several regional municipalities to regulate routes used for hauling waste.

However, under the Environmental Protection Act, the Province's Environmental Assessment Board can set operating conditions for waste disposal sites and prescribe routes for transporting waste. The courts have ruled that, when there is a conflict between municipal and provincial requirements, the Province's requirements supersede those of the municipality. The question is whether changes are needed to deal with the overlapping powers affecting municipal waste management.

Fragmentation of Authority

In many regional municipalities, local municipalities have collection authority and the upper-tier is responsible for providing disposal facilities. This division of waste management powers hampers development of a co-ordinated waste diversion strategy. For instance, a regional municipality's strategy to encourage waste diversion by banning certain recyclables from its landfill could be jeopardized because the cost of collection for the lower tier municipalities would increase. For that reason the lower tier municipalities might oppose such a strategy. Moreover, this type of a fragmented system does not make it easy to use the revenue from one component to subsidize another; this compromises the ability of some regional municipalities to redirect waste management efforts towards greater use of 3Rs programs.

While counties can assume responsibility for all waste management activities, many are not providing any services. And most of those which have decided to become involved have taken on only one or two activities, such as providing new disposal sites or 3Rs programs.

Because in a two-tier system neither level of municipal government controls all the components of a waste management system, it is difficult to plan and implement one that is highly co-ordinated and integrated.

Need For New Legislation

Clearly, most municipalities do not have sufficient authority to engage in the wide range of activities necessary to develop and operate a comprehensive and integrated waste management system geared to diversion and environmental protection. Existing legislation needs to be revised to enable all municipalities in Ontario to meet current and future challenges in this regard.

PRINCIPLES FOR MUNICIPAL WASTE MANAGEMENT POWERS

The following principles are intended as a framework for developing proposals and options for municipal waste management geared to waste diversion; the proposals and options themselves are discussed later.

- Waste management powers should be designed to foster the development of waste management systems that are:
  - geared to resource conservation and waste diversion;
  - highly integrated and co-ordinated;
  - in accordance with provincial requirements; and
  - on a scale that permits development of financially sustainable and efficient systems.
- The authority to supply waste management services should be vested in the municipal level that can most cost efficiently and effectively deal with their environmental impact.
- Municipalities should have the powers necessary to implement waste management plans that have waste diversion as their central objective.
- Waste management legislation should give municipalities the power to ascertain and recover the full cost of waste management and to inform taxpayers about the full price of waste generation.
- Any overlap between provincial and municipal waste management powers should be minimized, in order to ensure that there are clear lines of accountability.

PROPOSALS FOR MUNICIPAL POWERS RELATED TO SOLID WASTE MANAGEMENT

The proposals for municipal powers related to solid waste management are divided into functions and distribution of authority.

Functions

The proposals dealing with functions are for powers that would enable municipalities to meet contemporary waste management challenges. All of these would be permissive powers. Each municipality would be able to decide which powers of those available in the legislation it needed to use. Depending on their circumstances, some municipalities might need a large number of the available powers; others might need to use fewer powers.

The proposals in this section do not differentiate between the two levels of municipal government in the county and regional municipal systems and, therefore, do not indicate whether powers under discussion should be exercised by the upper or lower tier. The allocation of powers is considered in a later section, "Distribution of Authority" (see pages 36 to 39).

The proposals related to functions consist of potential powers and proposed options.

Potential Powers

The following potential powers are considered necessary to enable municipalities to meet modern waste management challenges and fulfil provincial environmental requirements. All municipalities already have some of these powers and a number have most, but only under enabling legislation that is ambiguously worded. The following would improve the clarity of the existing provisions, expand their scope, and extend them to all municipalities.

1. General Waste Management

It is proposed that permissive authority be given to municipalities to manage all types of waste: solid, liquid, and hazardous. This authority would include: planning, developing, and operating waste management facilities; closing and decommissioning them; and providing perpetual care of decommissioned sites. It would also include providing services for collecting, reducing, reusing, recycling, and disposing of discarded material. The power to develop facilities for waste management activities would include the ability to purchase land for developing such facilities.

It is proposed that permissive authority for 3Rs include: providing treatment and processing facilities that use discarded matter as raw material; establishing promotional and educational programs related to waste management; selling and marketing the products of waste; as well as doing research and development, and assuming ownership of patents related to waste management.

These provisions spell out the full range of activities required to manage waste, seeking to clearly define municipal authority to engage in 3Rs activities. It expressly provides for all functions required to support implementation of 3Rs programs, such as selling and marketing the products of waste, as well as researching and developing programs and services related to waste management functions. The Association of Municipalities of Ontario and several municipalities have asked for such powers.

The management of hazardous waste is currently a provincial responsibility. However, many municipalities collect and accept hazardous waste from certain sources, including that from households and small commercial establishments, such as dry cleaning shops and photography studios. Municipalities need explicit powers to continue to provide these important services.

2. Increased Penalties

It is proposed that penalties for breaching municipal by-laws related to solid waste management be increased to equal those in the Environmental Protection Act.

The current maximum penalty for breaching municipal by-laws related to waste management is $5,000. Increasing this to the level provided by the Environmental Protection Act would mean significantly higher fines could be levied against those who violate municipal waste management by-laws. Penalties for violating municipal by-laws pertaining to sewer use have already been increased to the level provided by the Environmental Protection Act. As waste management regulations become stiffer, it may be necessary to increase the deterrents to behaviour that damages the environment or violates municipal by-laws.

3. Access to Property

It is proposed that municipalities be given permissive power to enter properties for the purpose of conducting soil tests and planning studies related to site selection for waste management facilities, subject to appropriate safeguards of the rights of private property owners.

Municipalities are concerned that their efforts to develop waste management facilities have often been frustrated because they have no authority to enter property to conduct tests that can determine whether a particular site is appropriate for a waste management facility. Obtaining permission to enter property is usually time consuming, and as a result, municipalities have been forced to reject certain locations prematurely. Consequently, their site searches are not as thorough as they might be for the purposes of the environmental assessment process. Therefore, the Association of Municipalities of Ontario and some municipalities have asked for legislation that would enable municipalities to enter private property for soil testing related to the development of waste management facilities.

Providing municipalities with the power to enter private property to conduct soil tests might be an infringement on the rights of private property owners. To ensure that their rights are fully protected, legislation would have to include safeguards for that purpose.

Proposed Options

The following proposed options offer some approaches to dealing with specific waste management problems. They are not intended as an exhaustive list of alternatives.

1. Regulating the Flow of Waste

Among the options that might be considered for defining the power of municipalities to control the flow of waste generated within their boundaries are:

Option A:

Permissive authority to direct residential waste to designated waste management facilities.

Permissive authority to require source separation of materials discarded by households.

Permissive authority to designate those materials discarded by households that must be diverted from disposal.

Option B:

Permissive authority to direct residential waste to designated waste management facilities; also permissive authority to direct IC&I (institutional, commercial, industrial) discarded materials for which diversion facilities have been developed by the municipality.

Permissive authority to require source separation of residential waste; also permissive authority to require source separation of materials discarded by the IC&I sector that must be diverted provided the municipality has developed waste diversion facilities for these materials.

Permissive authority to designate materials discarded by households which must be diverted; also permissive authority to designate materials discarded by the IC&I sector that must be diverted, provided that the municipality has developed diversion facilities for that material.

Option C:

Permissive authority to direct residential waste to designated waste management facilities; also permissive authority to direct IC&I (institutional, commercial, industrial) waste for which the municipality has a waste diversion strategy accepted by the Ministry of the Environment. In reviewing a waste diversion strategy, the Ministry would consider the administrative and technical expertise of the municipality, as well as the content of the plan and the degree to which it complies with provincial requirements and objectives.

Permissive authority to require source separation of residential waste; also permissive authority to require source separation of materials discarded by the IC&I sector which must be diverted and for which the municipality has a waste diversion strategy.

Permissive authority to designate materials discarded by households which must be diverted; also permissive authority to designate materials discarded by the IC&I sector which must be diverted and for which the municipality has a waste diversion strategy.

Option A would apply in cases where residents bring their waste to municipal disposal sites or in which waste disposal is the responsibility of the upper tier municipality and collection of the lower tier. In the latter situation, the upper tier would be able to direct the lower tier to take the waste to designated disposal sites. In the former situation, the municipality would be able to direct its residents to take their waste to specific disposal sites. (It should be noted that the Regional Municipality of Waterloo can direct the waste collected by its local municipalities to designated disposal facilities. Counties that have assumed the waste disposal function have similar powers.)

There are several disadvantages to Option A. Some local municipalities might be concerned about being directed by the upper tier government to specific facilities. Other municipalities might feel that, since this option does not grant municipalities control over the flow of IC&I waste, their ability to implement plans for managing IC&I waste, would be impeded.

Municipal Powers to Regulate the Flow of Waste
Summary of Options

	Options		
Components	**A**	**B**	**C**
Direct residential waste	❍	❍	❍
Require source separation of residential waste	❍	❍	❍
Designate residential recyclable materials	❍	❍	❍
Direct IC& I waste for which municipality has facility		❍	
Require source separation of IC& I waste for which municipality has facility		❍	
Designate IC& I recyclable materials for which municipality has facility		❍	
Provincially approved waste diversion plan (WDS) required			❍
Direct IC& I recyclables for which there is a WDS			❍
Require source separation for IC& I recyclables for which there is a WDS			❍
Designate IC& I recyclables for which there is a WDS			❍

Option B would enable municipalities to develop a greater number of large-scale and economically efficient facilities than is possible under Option A. Under Option B, municipalities would be able to ensure that they collect recyclables from the household sector and part of the IC&I sector. However, by allowing municipalities powers that might potentially permit them to monopolize parts of the waste management system, this option, if not wisely used, could result in reduced competition and could thwart the development of new technologies by the private sector.

Those opposed to municipal control of the IC&I waste stream are likely to resist this option as an intrusion into the marketplace. There may also be some concern that, if municipal control of some recyclables could be exercised outside the context of an approved plan, as it could in this option, the resultant uncertainty might discourage investment by the waste management industry.

At the same time, those who support municipal authority over the entire waste stream would argue that this option does not go far enough: ownership of waste facilities should not be a criterion for allowing municipalities to manage waste generated within their boundaries. They would argue that, because municipalities are required to meet diversion targets for all waste generated within their boundaries, they should be able to regulate the flow of all waste, irrespective of ownership of facilities.

Option C would give municipalities almost total authority to plan for and manage all waste generated within their boundaries and would permit municipalities to develop and implement comprehensive strategies for the entire waste stream. They would be able to monitor the degree to which waste reduction targets were being met on a municipality-wide basis. The option would also allow private/public sector co-ordination in developing facilities. Because all facilities could be assured of a supply of waste, risk would be considerably reduced.

In Options B and C waste management facilities owned by municipalities could become significant sources of revenue. There is the argument that, since municipalities bear the heaviest burden of responsibility for waste management, they should be able to derive sufficient revenues from their facilities to finance their waste management systems. By providing for a provincially approved waste diversion strategy, Option C ensures that controls would be designed in accordance with a well-researched plan developed with the full participation of all stakeholders, and one which the municipality was capable of implementing. In this option, and in Option B, municipal access to provincially required waste audits by IC&I waste generators and the municipal role in reviewing such audits might also have to be considered.

Option C might be considered controversial, given that private firms would have to operate within a framework controlled by municipalities. It could be seen as restraining competition among suppliers of waste management services.

2. Compensating Municipalities with Landfill Facilities

Among possible options in considering the issue of compensation to municipalities for hosting landfill sites are:

Option A:
Do not give municipalities power to require compensation from waste disposal site operators and rescind the power currently found in legislation affecting counties and certain regional municipalities.

Option B:
Extend the municipal power to require compensation from waste disposal operators to all municipalities with waste disposal authority, but restrict the amount of compensation to waste management related costs (for example, the development of a reserve fund for replacing the waste disposal facility, subsidizing 3Rs collection and programs, for extra expenditure on road maintenance, etc.). The compensation would be subject to appeal to the Ontario Municipal Board.

Option C:
Extend the power to require compensation from waste disposal operators to all municipalities with waste disposal powers, without restrictions on the use of the funds received, subject to appeal to the OMB.

Currently local municipalities and most regional municipalities do not have the power to require compensation from waste disposal site operators (Option A). Waste disposal operators who do not have to pay the host municipalities compensation can charge a lower rate for waste disposal than those who are required to pay municipalities a levy.

Several regional municipalities (Halton, Durham, York and Waterloo) and counties that have assumed waste disposal authority, have the power to require compensation from waste disposal operators seeking to locate facilities within their boundaries (as in Option B). In some cases, municipalities without such express authority have also been obtaining compensation from waste disposal operators, many of whom consider it the cost of doing business. Offering financial benefits sometimes overcomes opposition to a landfill site being located in a municipality. Rescinding the municipal power to require compensation, as provided in Option A, would be opposed by municipalities which are currently levying a charge against waste disposal operators.

Option B would permit municipalities to require compensation, but limit it to an amount related to the cost of operating their waste management systems. There is the sense that a waste disposal facility has an impact on a municipality that goes beyond direct expenses and that the indirect impact should be taken into account in estimating the level of compensation. For instance, development of a waste disposal site reduces the number of future sites available to a municipality for developing its own landfill facility. Therefore, the argument goes, there should be no restrictions on municipalities' power to require compensation (as suggested in Option C).

However, unlimited municipal power to require compensation could result in excessive demands and, in turn, increase the cost of waste disposal. It seems reasonable to assume that the right to appeal to the Ontario Municipal Board would moderate the charges municipalities levy on waste disposal operators.

As noted, enabling municipalities to require compensation from waste disposal operators would probably result in higher costs for private operators and for municipalities that have to rely on facilities outside their areas. On the other hand, the higher cost incurred by a municipality for locating a waste disposal site outside its boundaries might be an incentive to municipalities to seek landfill facilities within their own boundaries.

3. Regulating Tipping Fees

Among the possible options that could be considered in deciding whether to permit municipalities to regulate tipping fees at waste management facilities are:

Option A:
Do not grant municipalities the power to regulate the tipping fees of waste management facilities that are not their own; this is the current situation.

Option B:
Give municipalities permissive authority to regulate tipping fees for all facilities (private or municipal) that are part of their waste management systems in or outside municipal boundaries, in accordance with the waste diversion strategy accepted by the Ministry of the Environment.

Municipalities do not have the authority to regulate tipping fees charged by waste disposal facilities. Some impose high fees for use of their own facilities, in an effort to reduce waste generation. They point out that this strategy would fail if IC&I waste generators were able to send their garbage to other, less expensive, facilities.

On the other hand, if municipalities were permitted to direct waste to designated facilities (see options on Regulating the Flow of Waste, pages 30 to 33) a method would have to be established to ensure that such designated facilities charged similar prices for similar services. For instance, if municipalities had the authority to say that waste from one firm must be taken to a designated facility, and that waste from another firm must be taken to a different but designated facility, both facilities would have to charge the same rates for similar services. Otherwise, flow control would mean making firms pay different prices for the same service.

Such a system would be difficult to enforce: waste disposal operators could be required to vary their fees for the same service, depending on the source of the waste.

Municipal control over prices for use of waste management facilities might be seen as interference in the market place and would probably give rise to opposition to Option B.

4. Charging For Waste Management Services

Consideration could be given to the following options regarding the methods municipalities might use to charge for waste management services:

Option A:
Municipalities could be granted the authority to charge for disposal of waste by class, volume, weight, or any criteria they choose.

Option B:
Municipalities could be granted authority to charge for collecting and disposing of waste by class, volume, weight, or any criteria they choose.

Local municipalities are permitted to charge taxpayers a monthly fee for solid waste management services or to impose taxes based on the assessed value of a taxpayer's property. But the Municipal Act does not expressly provide local municipalities with authority to impose user charges on their residents.

Many regional municipalities and all counties with waste disposal powers are allowed to charge for waste disposal by weight, volume, class, or other criteria. This authority can be used by an upper-tier municipality with waste disposal powers for levying landfill charges against lower-tier municipalities. Option A would extend such power to all municipalities with waste disposal authority; in a two-tier municipal system, a fee schedule based on the quantity of disposed waste would encourage the lower-tier entity to reduce the amount of waste generated within its boundaries.

At present, municipalities are not expressly authorized to institute a user charge scheme for waste collection, as they would be under Option B. Such a system would provide direct savings to individuals who reduce the level of waste they produce — a powerful incentive for waste reduction at source. Three cities have asked for this power: Kingston, Waterloo, and Peterborough. However, user pay systems could be an unfair burden to large families and might also encourage a higher incidence of illegal dumping.

Neither option precludes municipalities from using taxes to finance waste management systems.

Distribution of Authority

Having considered possible waste management powers for the municipal sector as a whole, we turn to options for allocating the main functional powers (i.e., collection, 3Rs programs, and disposal powers) between the two levels of municipal government in regional municipal and county systems. (Allocating powers described earlier would have to be considered in the light of decisions on the main functional powers.)

Some options for distributing powers may be more appropriate in some parts of the Province than in others, depending on the size of their populations, the complexity of existing waste management, and the level of services being provided at present. For instance, among the options that follow, the first might be more appropriate for the regional municipalities in the Greater Toronto Area than in other parts of the province.[1]

5. Allocating Authority to Upper Tier and Lower Tier Municipalities:

Consideration could be given to the following options for distributing solid waste management powers between lower and upper tier municipalities in counties, and in regional municipalities:

Option A:
All waste management powers of local municipalities would be transferred to regional municipalities and counties; upper tier municipalities would be granted 3Rs powers and be permitted to delegate transferred and 3Rs powers to local municipalities and set the terms and conditions for such delegation.

Option B:
Regional municipalities and counties would be granted authority over solid waste disposal and 3Rs programs but local municipalities would retain the authority to collect waste, subject to terms and conditions established by the upper-tier municipalities. Upper tier municipalities would be granted authority to assume collection services, with the agreement of the local municipality or municipalities.

Option C:
Regional municipalities would be granted authority over solid waste disposal. Lower-tier municipalities would be granted authority over 3Rs and would retain authority over collection; upper-tier municipalities would have the authority to assume collection and 3Rs powers from their local municipalities, with agreement from them.

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[1] To accelerate implementation of 3Rs programs in the Greater Toronto Area (GTA), in November 1990, the Ontario government announced its intention to develop a special waste reduction strategy for the GTA. Details were outlined in a paper, *The Waste Crisis in the Greater Toronto Area: A Provincial Strategy for Action*, released on 27 June 1991 by the Minister of the Environment. This paper states the Government's intention to introduce legislation to give GTA upper tier municipalities authority for 3Rs activities, while also offering them the option of delegating specific powers to their respective lower-tier municipalities.

According to the strategy document, the legislation was to have been introduced in the fall of 1991. It was delayed to permit the Ministry to undertake consultations on how legal authority over 3Rs and related waste management activities could be transferred to regional governments in the GTA; the postponement also allows the Province to enter concurrent discussions with municipalities, on broader waste management-related issues.

In counties, lower-tier municipalities would retain all waste management powers, but the county would be granted the authority to assume any or all such powers from lower-tier municipalities (as provided in Bill 201, 1989).

Option A grants the upper tier power over all aspects of waste management. This option is most likely to encourage development of large scale, integrated, highly co-ordinated and comprehensive waste management systems geared to waste reduction provided the upper-tier does not delegate any function to lower tier municipalities.

On the other hand, the unique service requirements of each community will be more difficult to meet if all waste management powers are centralized at the upper tier. Depending on how upper-tier municipalities exercise their authority to delegate powers, implementation of Option A might result in major changes to the existing distribution of municipal powers.

However, in regional municipalities where waste management functions currently undertaken by local municipalities are delegated back to them, the existing distribution of functions might continue and the regions' capacity to operate integrated and co-ordinated waste management system might not improve.

In many instances, careful delegation of authority could be a great benefit, allowing municipalities to work out a division of responsibility that is sensitive to local circumstances. The upper tier's power to set terms and conditions for delegation, if properly exercised, would allow it to co-ordinate and control strategic elements of the waste management system.

Disposal and 3Rs programs often require larger scale operations which are more appropriately situated at the upper tier. In Option B, they are the responsibility of the upper tier and there is no delegation of authority. This is a clearer division of authority than Option A.

Collection services have more impact on local residents and, ideally, these should be sensitive to the circumstances of each community. While Option B provides local control, dividing authority for collection from the rest of the system could make it difficult to develop an integrated system.

Option C provides the upper tier with power over waste disposal and local municipalities with power over collection and 3Rs. At the same time, it permits upper tiers to assume collection and 3Rs powers from the lower tier, if the lower tier agrees. Because this option would not give the upper tier authority over 3Rs programs or collection, it would be difficult to implement a large-scale, comprehensive system geared to waste reduction. A situation in which all lower tier municipalities agreed to have the upper tier assume 3Rs authority would be more conducive to development of a modern waste management system.

Under this option, however, each local community, acting independently, would be able to develop collection and 3Rs programs adapted to its circumstances. Furthermore, counties engaged in providing waste management services in accordance with Bill 201 would be able to continue to do so without disruption.

CONCLUSION

There is a major shift in the way Ontario's municipalities handle the waste generated within their boundaries. In future, the central purpose of waste management will be to divert, rather than to dispose of, waste.

This means that there must be a more comprehensive and co-ordinated approach to managing solid waste; it also means that municipalities will have to be given new legislative tools in order to meet the challenge.

By examining some of the new statutory tools that municipalities might use in order to achieve these objectives, and by presenting them as potential powers and proposed options, this paper is meant to stimulate informed discussion among all stakeholders. It is also hoped that all those with an interest in ensuring that municipal solid waste is managed in an environmentally sustainable, cost efficient and effective way will present their views and concerns to the Government. This will greatly assist the Province in its goal of developing legislation that takes into account the interests of all affected parties.

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